

**Kern Council Services to the Developmentally Disabled, Inc. and Social Services Union, Local 535, Service Employees International Union, AFL-CIO, CLC, Petitioner. Case 31-RC-4995**

December 23, 1981

# DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to and determinative challenges in an election held on October 7, 1980,<sup>1</sup> and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the briefs and hereby adopts the Hearing Officer's findings and recommendations,<sup>2</sup> except as modified herein.

The Hearing Officer found that Judy Crawford was not a supervisor under Section 2(11) of the Act and recommended overruling the challenge to her ballot. His determination that Crawford was not a supervisor was based, *inter alia*, on his conclusion that her alleged supervisory functions were isolated and routine in nature and did not require the use of independent judgment. Additionally, the Hearing Officer found that Crawford had no authority to assign work, hire, fire, suspend, lay off, transfer, or promote employees, or to effectively recommend such action.

The Petitioner has excepted to the Hearing Officer's recommendation to overrule the challenge to Crawford's ballot and contends that Crawford is a supervisor because, based on the Hearing Officer's own findings, Crawford has the authority to grant or deny sick leave and vacation leave, to discipline an employee, to evaluate her work performance, and effectively to recommend that her salary be increased. We find merit in the Petitioner's exceptions.

Crawford is a secretary in the Employer's "assessment and consultation" (herein AC) unit work-

ing directly under the executive/administrative assistant to the Employer's director. The only other secretary in the unit is Paula Antell. Crawford and Antell each receive work assignments from and perform primarily secretarial duties for one of two separate groups of professionals in the AC unit. When one of the secretaries is absent for a significant length of time, the other assumes both sets of secretarial duties.

Crawford trained Antell when the latter was hired by the Employer in September 1979. Additionally, since approximately June 1980, Crawford has approved Antell's request for time off and has filled out monthly time summary sheets for Antell. Crawford signs both the leave approval and time summary forms in the space designated for supervisory approval.<sup>3</sup> Further, as the Hearing Officer found, Crawford has authority to discipline Antell and has exercised this authority in the past. Thus, on one occasion when a nutritionist for whom Antell performed secretarial work had a problem with Antell's work attitude, Crawford counseled Antell regarding her attitude and disposition. On another occasion, Crawford directed Antell to make up work time lost due to her lateness.

Most significantly, Crawford prepared Antell's annual evaluation in which she recommended that Antell be raised to a higher salary level. Crawford discussed this evaluation with Antell and signed it in the space designated for "supervisor." There is no evidence of any additional independent supervisor investigation of Antell regarding the salary increase. Crawford's recommendation was approved by the Employer's director.

Section 2(11) of the Act defines a supervisor as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." It has repeatedly been pointed out that, since this definition is stated in the disjunctive, possession of any of the enumerated powers or attributes is sufficient to establish the existence of supervisory status.<sup>4</sup>

Here, Crawford possesses several of the indicia of supervisory authority since the record estab-

<sup>1</sup> The election was conducted pursuant to a Decision and Direction of Election. Of approximately 17 eligible voters, 8 cast ballots for and 7 against the Petitioner. There were two challenged ballots, a number sufficient to affect the election results. In addition, the Petitioner filed objections to the election. Following an investigation, the Regional Director issued his Supplemental Decision in which he overruled the Petitioner's Objections 1 and 2 and ordered that a hearing be held to resolve the factual and legal issues raised by the Petitioner's Objections 3 and 4 and by the two challenged ballots. Thereafter, a hearing was held and the Hearing Officer issued a report on challenges and objections.

<sup>2</sup> In the absence of exceptions thereto, we adopt, *pro forma*, the Acting Regional Director's recommendations that the challenge to the ballot of Terry Wilson be sustained, that the Petitioner be allowed to withdraw its Objection 3, and that the Petitioner's Objection 4 be overruled.

<sup>3</sup> The Hearing Officer found that the Employer's accounting office considered Crawford to be Antell's supervisor and automatically sent her the personnel forms for Antell which are generally sent to an employee's supervisor.

<sup>4</sup> *Penn Industries, Inc.*, 233 NLRB 928, 930-931 (1977), and cases cited therein.

lishes that she counsels and disciplines Antell,<sup>5</sup> evaluates her performance, and has effectively recommended an increase in her salary.<sup>6</sup> Additionally, Crawford has authority to grant or deny Antell's leave requests. Concededly, these supervisory functions do not occupy the majority of Crawford's time, but Crawford's constant possession of supervisory authority, regardless of the frequency of its exercise, is to be distinguished from instances where an individual lacks supervisor status because he *possesses* supervisory authority sporadically or infrequently.<sup>7</sup> Moreover, the relatively few instances of Crawford's exercise of supervisory authority are explicable by her relatively recent assumption of supervisory authority over Antell (June 1980), and the fact that she supervises but one employee, a factor that in itself does not bar supervisory status.<sup>8</sup> Finally, Crawford performs her disciplinary and evaluation functions independently and these functions are those which require discretion and independent judgment.

In view of the foregoing, we find that Crawford is a supervisor within the meaning of Section 2(11)

<sup>5</sup> See, e.g., *J.K. Electronics, Inc., d/b/a Wesco Electrical Company*, 232 NLRB 479 (1977).

<sup>6</sup> See, e.g., *Our Way, Inc./Our Way Machine Shop, Inc.*, 238 NLRB 209, 213 (1978).

<sup>7</sup> Cf. *Complete Auto Transit, Inc.*, 214 NLRB 425 (1974).

<sup>8</sup> *Cartwright Hardware Co., Inc.*, 229 NLRB 781, 783, fn. 17 (1977).

of the Act. Accordingly, we conclude that the challenge to Judy Crawford's ballot should be sustained. Since both the challenges to ballots in the election have been sustained, the tally shows that a majority of valid ballots have been cast for the Petitioner. Accordingly, we shall issue a Certification of Representative.

#### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Social Services Union, Local 525, Service Employees International Union, AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

All clerical employees employed by the Employer at its facilities located in Bakersfield, Ridgecrest, Shafter, Delano and Lamont, California, excluding professional employees, Client Program Coordinator Assistants, guards and supervisors as defined in the Act, as amended.